

STATE OF CONNECTICUT GENERAL ASSEMBLY  
ENVIRONMENT COMMITTEE

IN RE: SB-206AAC Local land Use Agencies and the Siting of Telecommunication Towers  
MARCH 1, 2010

**TESTIMONY IN SUPPORT OF MODIFYING SB 206**

My name is Keith R. Ainsworth, Esq. I am a partner at Evans, Feldman & Ainsworth of New Haven and a Connecticut environmental attorney in private practice for 20 years. I represent a mixed clientele, but often represent individuals and businesses and organizations asserting claims to protect and conserve natural resources.

Today I am representing multiple citizen and neighborhood groups who are facing cell tower applications which are proposed in residential neighborhoods in scenic rural areas and along the shore near Long Island Sound. I am concerned with increasing federal intrusion into the most local of decisions – zoning and the acquiescence of this intrusion by the Connecticut Siting Council.

We support SB0136 in that it seeks to modify C.G.S. sec 16-50x which allows municipalities the ability to regulate the siting of cellular communication towers, however we feel it doesn't go far enough since local control needs to be fully returned to the local level where specific knowledge of the local landscape (political, social and geographical) can be better applied to appropriately balance the need for towers and the need to protect scenic vistas and the property values of homeowners.

There is nothing so quintessentially local as the building and siting of structures and nothing quite so important about that process as the protection of the reasonable expectations of local property owners that residential neighborhoods will not be despoiled by industrial infrastructure.

Frankly, the law doesn't go far enough, but currently municipalities have no ability to regulate the siting of cell towers in their neighborhoods. The Connecticut Siting Council is well suited to its role in the siting of complex power plants and power transmission facilities, but with all due respect to an entity created by the legislature, it has a dismal record in the placement of cell towers. Of over 300 applications, I believe only 4 have been rejected.

While the Siting Council will be quick to tell you that they modify many of these applications, the modifications to which they refer are minor stylistic changes that still leave neighboring property owners and scenic vistas damaged.

Connecticut is the only state with the exception of Vermont that sites cell towers through a state agency. It is the only state that uses an agency that precludes direct testimony by intervenors. I can say that the Connecticut Siting Council is without question the least welcoming, most bureaucratic agency that I have ever appeared before. Universally, citizens in towns across Connecticut perceive the agency's bias toward industry and open hostility toward citizen intervenors. They routinely accommodate applicants while punishing citizens who fail to navigate through their technical proceedings.

The reason for this perception is the rigid structure of their procedures and the separation of the decision-making from the care that local communities give to such decisions. The result is a flawed process which deprives Connecticut citizens of rights reserved to them by Congress in the Telecommunications Act of 1996 ("TCA").

As the Second Circuit ruled in Sprint Spectrum, L.P. v. Willoth, 176 F.3d 630 (2d Cir. 1999), the goals of increasing competition and rapid deployment of new technology do not trump all other important considerations, including the preservation of the autonomy of states and municipalities. Rather in the context of constructing a national wireless telecommunications infrastructure, Congress chose to preserve all local zoning authority over decisions regarding the placement, construction, and modification of personal wireless service facilities, 47 U.S.C. §332(c)(7)(A), subject only to the limitations set forth in § 332 (c)(7)(B). Willoth, 176 F.3d at 639-40. The legislative history of the TCA illustrates the importance of preserving local land use authority. As stated in the Senate Report, § 332 "preserves the authority of State and local governments over zoning and land use matters except in the limited circumstances specified in that section." See Sen. Rep. No. 104-230, at 458 (1996).

While local land use agencies vary in capability, providing local land use agencies with the OPTION to regulate the placement of towers recognizes the spirit of home rule and keeps the power to balance infrastructure needs with the fundamental rights of homeowners where it belongs, with the people.

Please consider modifying SB 206 to include language that modifies 16-50x to return local control to land use agencies where it successfully resided for many years. I understand there is a House Bill which is being drafted to accomplish this.